IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.156 of 2004

IN

SUMMARY SUIT NO.3978 OF 2003.

Gaurang M. Mehta .. Plaintiff.

vs.

M/s. Repro India Ltd. .. Defendant.

Mr.C. Ardheshir with Mr. D.R.Mehta i/b. D. Liladhar Advocate for the Petitioner.

Mr.V.R.Dhond i/b. S.A.Sawant, Advocate for the Respondent.

CORAM : D.G.KARNIK, J

DATED : 15th February, 2005.

P.C. :

1. Heard learned Counsel for the parties. The plaintiff has filed this suit for recovery of the sum of Rs.12,62,872/- being the price of goods allegedly sold to the defendant under two invoices dated 12.12.2000 and 22.1.2001 at exhibit A and B

to the plaint.

2. The defendant has inter alia raised two defences. He firstly contended that the plaintiff's firm is not a registered partnership firm and therefore the suit is not maintainable. The suit has been filed by Mr. Gaurang Mehta, claiming to be sole proprietor of M/s. Kosmos Paper Stores. Case of the plaintiff as made out in the plaint is that M/s. Kosmos Paper Stores is a proprietory concern of which Mr. Gaurang Mehta is the proprietor. The proprietory concern supplied the goods to the defendants. Perusal of the correspondence shows that many of the letters were written and signed by Gaurang Mehta as partner of M/s. Kosmos Paper Stores. Learned Counsel for the plaintiff states that M/s. Kosmos Paper Stores was initialy a partnership firm between Gaurang Mehta and his father and on death of his father on 20.3.2003 the firm became a proprietory concern. He hands in a xerox copy of the death certificate of father of the plaintiff. The plaintiff has nowhere pleaded in the plaint that the concern was originally a partnership firm

and it subsequently became a proprietory concern on the death of his father. The, defence raised by the defendant that the suit is not maintainable as the plaintiff firm is unregistered is a possible defence.

3. Second defence of the defendants also appears to be possible. In paragraph 5 of the plaint, plaintiff has averred that one M/s. Houselayouts Co. (I) Pvt. Ltd had agreed to purchase the paper from the plaintiff which was likely to be need by the Defendantfor printing work of Houselayouts and therefore the plaintiff delivered the goods to the defendant for printing. Thus, the plaintiffs own case is that the order was not placed by the defendant, but it was placed by the third party M/s. Houselayouts Co (I) Pvt.Ltd which is primarily liable to make the payment. The defendant has filed an affidavit stating that M/s. Houselayouts Co. (I) Pvt. Ltd. owes money to the defendant and price of the paper was to be adjusted towards the money due by M/s. Houselayouts Co.(I) Pvt. Ltd. In any event, since the defendant had not placed the

order, the defendant is not liable to pay the price of the goods which was delivered to the defendant as an agent of M/s. Houselayouts Co.(I) Ltd.

4. In view of this the defendant is granted unconditional leave to defend the suit. Suit shall stand transferred to Commercial Causes. The defendant shall file written statement within a period of one month.

(D.G.Karnik, J.)